

ALIPIO MONDIGUING AND ANDRES DUNUAN, PETITIONERS, VS. HON. FRANCISCO MEN ABAD, AS JUDGE OF THE COURT OF FIRST INSTANCE OF IFUGAO; PEOPLE OF THE PHILIPPINES; MARIANO PACTIW, ALIA...

G.R. No. L-41313. November 06, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

Alipio Mondiguing and Andres Dunuan are two of the ten defendants accused of double murder, frustrated murder and attempted murder in Criminal Case No. 140 of the Court of First Instance of Ifugao Province (People vs. George Bayucca et al.). That case was filed in connection with an ambush which was perpetuated on July 23, 1970 at Baag, Banaue, Ifugao. As a result of that incident, Governor Gualberto Lumaig of Ifugao was wounded and his executive assistant and his driver were killed. Up to this time the accused in that case have not been arraigned.

On September 4, 1975 Mondiguing and Dunuan filed in this Court a petition to transfer the venue of the case to Baguio City or Quezon City. They claimed that they could not expect a fair and impartial trial in Lagawe, Ifugao because Judge Francisco Men Abad of the Court of First Instance of that province is a protege of Governor Lumaig and his brother, former Congressman Romulo Lumaig, and because their witnesses would be afraid to testify for fear of harassment and reprisals. The petitioners further claimed that, as may be inferred from previous incidents recounted in the petition, their lives and the lives of their witnesses and lawyers would be in grave danger in Ifugao because of the tensions and antagonisms spawned by the case and the political rivalry between the Lumaig and Mondiguing factions. (The accused, George Bayucca, was killed on October 28, 1970 and Alipio Mondiguing resigned as mayor of Banaue and took refuge in Baguio City).

The Acting Solicitor General interposed no objection to the change of venue but he invited the Court's attention to the suggestion of Governor Lumaig that the case may be transferred to the proper court in Isabela in view of its proximity to Ifugao.

Respondent Judge Francisco Men Abad in his comment disputed the correctness or truth of the grounds relied upon for the change of venue and prayed that the petition be dismissed. He said that, if there would be bias on his part, he would be biased in favor of the People of the Philippines. He said that the crime charged was not "committed personally against" Governor Lumaig. That statement is not correct since the governor is one of the victims mentioned in the information.

Judge Abad revealed that petitioner Dunuan sent to the court a letter dated August 30, 1975 wherein he declined the services of Atty. Jose W. Diokno (who filed the instant petition for transfer of venue). In view of that disclosure, the petition herein should be regarded as having been filed only by Alipio Mondiguing.

The fact is that this Court in *Paredes vs. Abad*, L-36927-28, April 15, 1974, 56 SCRA 522, 534, disqualified

Judge Abad from trying the electoral protests filed by Crescencio Paredes and Venancio Uyan against Gualberto Lumauig and John Langbayan. In that case it was alleged that Judge Abad was a political leader of Governor Lumauig and was recommended to his present position by the Lumauig brothers.

The issue is whether Mondiguing's plea for a change of venue is justified. A change of the place of trial in criminal cases should not be granted for whimsical or flimsy reasons. "The interests of the public require that, to secure the best results and effects in the punishment of crime, it is necessary to prosecute and punish the criminal in the very place, as near as may be, where he committed his crime" (Manila Railroad Co. vs. Attorney General, 20 Phil. 523, 562).

This Court is invested with the prerogative of ordering "a change of venue or place of trial to avoid a miscarriage of justice" (Sec. 5[4], Art. X of the Constitution). It "possesses inherent power and jurisdiction to decree that the trial and disposition of a case pending in a Court of First Instance be transferred to another Court of First Instance within the same district whenever the interest of justice and truth so demand, and there are serious and weighty reasons to believe that a trial by the court that originally had jurisdiction over the case would not result in a fair and impartial trial and lead to a miscarriage of justice" (People vs. Gutierrez, L-32282-83, November 26, 1970, 36 SCRA 172, 185).

A change of venue was ordered by this Court in a case where it was shown that the accused might be liquidated by his enemies in the place where the trial was originally scheduled to be held (People vs. Pilotin; Vincent Crisologo, movant, L-35377-78, July 31, 1975).

After a careful consideration of the circumstances recited in Mondiguing's petition to support his request for a change of the place of trial, we have reached the conclusion that his petition is meritorious.

In the interest of a fair and impartial trial and to avoid a miscarriage of justice and considering that his life would be in danger if he were to be tried in Lagawe, Ifugao, he should be tried by the Circuit Criminal Court in the City of Baguio.

The other relief sought by Mondiguing, which is that he be transferred from the Philippine Constabulary headquarters at Lagawe, Ifugao to Camp Crame should be submitted for the consideration of the Circuit Criminal Court

WHEREFORE, the petition of Alipio Mondiguing for the transfer of the venue of Criminal Case No. 140 of the Court of First Instance of Ifugao is granted. The said case should be transferred to the Circuit Criminal Court of the Second Judicial District so that it may be heard in Baguio City.

SO ORDERED.

Barredo, Acting Chairman, Antonio, Concepcion Jr., and Martin, JJ., concur.

Fernando, J., is on leave.

Martin, J., was designated to sit in the Second Division.

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